

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

DON ALBERT PAYNE, §
GLORIA JEAN PAYNE, §
Individually and on behalf of all §
Other persons similarly situated, §
§
Plaintiffs, §
§
v. §
§
CITY OF SAN ANTONIO, TEXAS, §
SAN ANTONIO POLICE DEPARTMENT, §
SAN ANTONIO HOUSING AUTHORITY, et §
al., §
§
Defendant. §

CIVIL ACTION NO. _____

SAN ANTONIO HOUSING AUTHORITY'S NOTICE OF REMOVAL

COMES NOW San Antonio Housing Authority (“SAHA”), one of the defendants in the above-named cause, and files this Notice of Removal in accordance with 28 U.S.C. § 1446(b). In support thereof, SAHA respectfully shows as follows:

I. INTRODUCTION

1. Plaintiffs sued SAHA and other defendants, including but not limited to the City of San Antonio (“COSA”), San Antonio Police Department (“SAPD”), San Antonio Mayor Ron Nirenberg (“Nirenberg”), San Antonio Police Chief William McManus, and San Antonio police officers William Kasberg, Shannon Purkiss, and Gerardo Morales, and Amy V. Carrillo for numerous alleged violations of 42 U.S.C. §§ 1983–1986 and Texas state laws.

II. FACTUAL AND PROCEDURAL BACKGROUND

2. Plaintiffs filed their Original Petition in Bexar County Court at Law No. 3. On September 21, 2018 under the cause number 2018-CV-05843. Plaintiffs filed an Amended Petition in cause number 2018-CV-05843 on November 19, 2018. Plaintiffs simultaneously had

a nearly identical cause of action pending in the Justice of the Peace Court under the cause number 2018-CV-06441.

3. The two causes were consolidated into one case under the cause number 2018-CV-05843 on December 14, 2018. *See Order Granting Defendant City of San Antonio's Motion to Consolidate and Denying Defendant San Antonio's Motion to Dismiss*, attached as **Exhibit A**.

4. On January 10, 2019, Defendant Nirenberg filed his Notice of Removal, which removed this case to the Federal District Court for the Western District of Texas and was assigned to Judge Rodriguez under cause number 5-19-CV-00020-XR. *See Defendant City of San Antonio's Notice of Removal*, attached as **Exhibit B**. The case was subsequently remanded to State Court on March 18, 2019. *See Order*, dated March 18, 2019, attached as **Exhibit C**.

5. During the time this case was removed to Federal Court, SAHA was not yet a properly joined defendant because SAHA had not been served citation in either state lawsuit or in the federal causes of action. SAHA subsequently waived service by filing a Waiver of Citation in cause number 2018-CV-05843 on April 3, 2019. *See Waiver of Citation*, attached as **Exhibit D**.

6. Currently, the following Defendants have been served with a copy of Plaintiffs' Amended Petition and citation or waived service of citation, thereby making them properly joined defendants who must consent to this removal: Amy V. Carrillo; William Kasberg; Shannon Purkiss; Gerardo Morales; Mayor Ron Nirenberg; the City of San Antonio; the City of San Antonio, improperly named as the San Antonio Police Department; San Antonio Police Chief William McManus; and Midcrown Pavilion Apartments. Each defendant's Notice of Consent is attached to this Notice as **Exhibit E**.

III. BASIS FOR REMOVAL

7. Removal is proper because Plaintiffs filed their lawsuit pursuant to 42 U.S.C. §§ 1983, 1985, and 1986. *Plaintiffs' Amended Petition* ¶10, attached as **Exhibit F**. Plaintiffs also allege causes of action under the Texas Constitution Article I §§ 3a and 19, and under the Texas Tort Claims Act. *Id.*

8. Pursuant to 28 U.S.C. §1331, the Federal District Courts have original jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the United States. Under 28 U.S.C. §1441(a), Plaintiffs' claims may be removed to Federal District Court.

9. This Court also has supplemental jurisdiction over all of Plaintiffs' state law claims because those claims arise out of a common nucleus of operative facts with Plaintiffs' federal law claims. 28 U.S.C. § 1337; *Barricks v. Minyard Food Stores, Inc.*, 170 F.3d 184 (5th Cir. 1999).

10. Venue is proper in this district because the state action being removed is located in Bexar County, which is within the San Antonio Division of the United States District Court for the Western District of Texas. 28 U.S.C. §1441(a).

11. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b) because it is filed within thirty days after SAHA waived service of citation and became properly joined to this case. “[S]uch waiver or acceptance shall have the same force and effect as if the citation had been issued and served as provided by law.” TEX. R. CIV. P. 119.

12. Additionally, under the federal rules “[a] waiver of service of process operates as a substitute for formal service of process.” *Rogers v. Hartford Life & Acc. Ins. Co.*, 167 F.3d 933, 937 (5th Cir. 1999); *see also Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S.

344, 354 (1999) (explaining that “if the complaint is filed in court prior to any service, the removal period runs from the service of the summons.”)

13. All defendants who have been properly joined and served have consented to the removal of this action. *See Ex. E.* The consent of any other defendant named in Plaintiffs’ Amended Petition is not necessary because they have not been properly joined and served with citation prior to the filing of this Notice of Removal. 28 U.S.C. § 1446(b)(2)(A); *Getty Oil Corp., a Div. of Texaco, Inc. v. Ins. Co. of N. Am.*, 841 F.2d 1254, 1262 (5th Cir. 1988).

14. Copies of all pleadings, process, orders, and other filings in the state-court causes of action, 2018-CV-05843 and 2018-CV-06441 are attached to this notice as required by 28 U.S.C. § 1446(a), as **Exhibit G**.

15. Pursuant to 28 U.S.C. § 1446(d), SAHA intends to serve written notice of this removal to all interested parties and County Court at Law No. 3, promptly after filing this Notice of Removal. A copy of the Notice of Removal that will be filed with the Bexar County Clerk is attached hereto as **Exhibit H**.

IV. PRAAYER

WHEREFORE, PREMISES CONSIDERED, Defendant San Antonio Housing Authority asks this Court to remove this lawsuit to the Federal District Court for the Western District of Texas, San Antonio division.

Respectfully submitted,

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AUTHORITY and AMY V. CARRILLO**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 17th day of April, 2019, a true and correct copy of the foregoing was served electronically on all known parties through the Court's CM/ECF system and by certified mail, return receipt requested to Plaintiffs' *Pro Se*:

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